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Debate on Navigability of Nooksack River, 1955

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The Legislature of the State of Washington passed a new law in 1955, Chap. 386 Session laws of 1955, Section one of which reads as follows: "The commissioner of public lands, upon application by any person, firm or corporation, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand and silt located upon beds of NAVIGABLE waters and any tidelands and shorelands owned by the State and providing for payment to be made therefor by such royalty as the commissioner may fix." The law then provides regulations for applications and permits, bond to be filed by persons taking gravel, and inspection of books by the commissioner to ascertain if the State is being fully paid for all materials removed.

Officials of the State are now interviewing the persons and firms engaged on the Nooksack River near Lynden and advising them that they will have to file applications for permits to take gravel and sand from the river bed, and make payment of .10 a yard for all such materials taken.

The law above cited provides that the State may do this as to such materials taken from the bed of NAVIGABLE waters. It does not give this right as to NON-NAVIGABLE streams. The question then is: "Is the Nooksack river a NAVIGABLE stream?" Our Supreme Court has repeatedly held that whether or not a river is navigable or non-navigable is a QUESTION OF FACT. A stream is not navigable unless it is "capable of being used practically for carriage of commerce" (Strand v. State (1943) 16 Wn.2d. 107). A stream can be used for floating logs and still be NON-NAVIGABLE under the provisions of Art. XVII of the State Constitution which provides as follows: "The State of Washington asserts ownership to the beds and shores of all NAVIGABLE waters in the State up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all ~~NON~~ NAVIGABLE rivers and lakes: PROVIDED that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the State." See also State ex rel. Davis v. Superior Court (1915) (84 Wash. 252) Wilson v. Prickett (1914) 79 Wash. 89) Diking District No. 2 -vs- Calispel Duck Club (1941) 11 Wash. 2nd. 131) The indisputable fact is that the Nooksack River is not navigable and the State itself recognized this fact when it built the new bridge across the river. The United States Department of the Army exercises jurisdiction over the Nooksack River from its mouth to Everson, Washington, a distance of about 26 miles, for the purposes of protecting the river as to bridges, pipelines, cables or other structures, but this in no way affects the question of the navigability or non-navigability of the River. The jurisdiction of the United States can be conclusively determined ONLY through the courts of this State. Every citizen and voter of Whatcom County well knows that the Nooksack River is not navigable. Therefore the State has no right to collect royalties as ~~xxx~~ the Commissioner of public lands proposes to do.

This matter is important to every citizen, voter and taxpayer in Whatcom County. If the state gets .10 per yard royalty, and there are extra bookkeeping expenses to operators, you will soon be paying .15 to .25 more for your gravel for inevitably such charges are and must be passed on to the consumer. Your paved roads, your buildings, your farm yards, your city streets will all cost that much more. If the regulation is impartially enforced, every farmer who gets some gravel from the Nooksack, as he is accustomed to do, must first get a permit, put up a bond, and pay

royalty to the State for every yard of gravel or sand he takes.

We believe the state Department has no right to "consider" the Nooksack Navigable at the cost to Citizens and taxpayers. The least they could do for the people is to bring a test case in the courts to ASCERTAIN if the river is legally declared to be "navigable". It is unfair to throw the expense of a costly law suit upon the small operators and farmers of the district. Furthermore, we believe, that in the light of the Supreme Court decisions of this state, the answer to the question of the navigability of the Nooksack is already here. By reason of this fact the matter really becomes a political question, rather than legal. Why force the Lynden folks to stand the costs of a court case when the courts have already given out several decisions which will give the legal answer. Therefore, citizens and taxpayers and voters see, phone or write your senators, representatives, county commissioners, and Governor. And if they fail you take legal steps to protect ~~your~~ your constitutional rights, and if you cannot do this, then remember at the next election who were responsible for taking one more legal right from your possession. Let your democracy function.

W. R. Le Roy